

Claimant alleges accidental injury to her right shoulder on February 26, 2005, when, while moving a car battery across a scanner, she suffered injury to her right shoulder. Claimant testified she advised several of respondent's representatives, including the customer service manager, Melinda Helget, of the injury. Ms. Helget acknowledges that claimant asked her for a brief break to obtain some aspirin or Advil, but made no mention of any work-related injury. Additionally, Wal-Mart's security cameras were unable to verify that claimant scanned any type of car battery on the date of accident. Finally, the records maintained by Wal-Mart do not indicate that claimant scanned a car battery at anytime during her shift on that date. Claimant's testimony, however, is that it may have been a car battery or it may have been a heavy tool of some type, it is not clear. Ms. Helget does, however, acknowledge that she relieved claimant for a short period of time in order for

claimant to go to the water fountain and take the Advil. The security tape presented for review does not indicate that claimant was relieved by anyone during the taped period in question. There is a brief period at approximately 18 hours 37 minutes on the tape when claimant is absent from her station. However, this absence only lasts for approximately 20 seconds and no one stepped in to relieve claimant during this time. It is possible that the occurrence, which claimant estimated occurred at approximately 6:30 p.m. on the date of accident, may have occurred at a different time during the day. Ms. Helget was unable to verify that she relieved claimant at 6:30 p.m. Instead, she testified that it may have occurred anywhere between 2:00 and 6:00 p.m. on that date.

Claimant did obtain medical care at the local emergency room on the date of accident and was provided some type of arm brace or sling. She was also taken off work for a short period, returning to work as a door greeter.

The evidence in this case is contradictory. It is unclear whether claimant injured herself handling a car battery or a heavy tool or at what time during her shift this alleged incident occurred. While claimant discussed the incident with other employees, there is no specific evidence in this record that claimant suffered the injury in question, but claimant did consistently report to the health care providers that the incident occurred and her description of the incident remains consistent in that she was lifting something heavy which caused her shoulder to hurt. Claimant identified several employees, including management-level employees, with whom she discussed the matter. Claimant alleged several of these employees, including a co-employee named Dawn, a manager named Cindy and a management-level employee named Ron, were advised of the incident or the situation surrounding the incident. Dawn supposedly noticed the discoloration in claimant's arm and advised her to report it to management. Cindy, a manager, advised claimant to report it as well. Claimant then filled out an incident report with the assistance of Ron Briggs, Jr., the assistant manager. Claimant reported to Mr. Briggs at approximately 10:30 to 10:30 p.m. that she had popped out her shoulder sometime around 6:30 and 7:00 p.m. Mr. Briggs, however, noted little, if any, pain displayed by claimant.

Claimant has sought and obtained medical care with several health care providers. The medical care, including that from the company doctor, Michael D. Jackson, M.D., does indicate slight range of motion abnormalities in the shoulder. Additionally, Dr. Jackson did take claimant off work, finding a possible moderate to severe strain of the right shoulder.

As noted above, the evidence in this case is contradictory on several levels. However, the Board finds that claimant has proven by the barest of margins that for preliminary hearing purposes she suffered accidental injury in the manner and on the date alleged. The Board is confident that additional information will be provided at the time of regular hearing in order to assist in the clarification of this dispute. The Board, therefore, finds based upon this somewhat contradictory record that claimant has proven that she suffered accidental injury arising out of and in the course of her employment and the

preliminary hearing Order of ALJ Pamela J. Fuller dated May 20, 2005, should, therefore, be affirmed.

As is always the case, preliminary findings are not binding upon a full hearing on the claim, but are subject to a full presentation of the facts.<sup>1</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Pamela J. Fuller dated May 20, 2005, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2005.

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BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant  
Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> K.S.A. 44-534a.